the prosecution proceeds in state or federal court. Compare *United States v. Childs*, 277 F.3d 947, 950-954 (7th Cir.) (*en banc*), cert. denied, 537 U.S. 829 (2002), with the decision below; *People v. Leigh*, 341 Ill. App. 3d 492, 496-497, 792 N.E.2d 809, 812-813 (2003); and *People v. Lomas*, 349 Ill. App. 3d 462, 469-471, 812 N.E.2d 39, 44-46 (2004).

Respondent maintains that "none of the cases" requiring reasonable suspicion "resulted in the suppression of evidence," but she is wrong. In Illinois alone, there is the decision below, *Leigh* and *Lomas*. There is also the Illinois Supreme Court's decision in *Bunch*, which, as respondent herself recognizes (Opp. 2, 8-9), affirmed the suppression of evidence after holding that questions unrelated to the traffic stop's purpose violated the Fourth Amendment. 207 Ill. 2d at 15-17, 796 N.E.2d at 1030-1031. There is also *Campbell*, where the Wyoming Supreme Court ordered the suppression of evidence after holding that the officer violated the Fourth Amendment by asking the motorist "whether he had 'high grade' marijuana in his vehicle while [the officer] was filling out the driver contact form." 97 P.3d at 785. See also *State v. Gibbons*, 248 Ga. App. 859, 863-864, 547 S.E.2d 679, 682 (2001); *State v. Taylor*, 126 N.M. 569, 575-577, 973 P.2d 246, 252-254 (App. 1998), cert. denied, 126 N.M. 534, 972 P.2d 353 (1999).

Thus, contrary to respondent's argument (Opp. 24), the courts' actual results have *not* "dovetailed," there *is* a "true conflict," and no conceivable marginal benefit would result from further percolation of this well-worn issue. The fact, emphasized by respondent (*id.* 2, 9), that this Court denied certiorari on the same question twice in 2002 and once in 2004 provides no basis to deny certiorari here.[5] To the contrary, the

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[5] The Court, of course, did not indicate why it denied certiorari in those three cases. In *Bunch*, petitioner argued that the officer, at the time he questioned the motorist, had probable cause to

split is even deeper now than it was then, creating an even greater need for this Court's intervention.

III. At a Minimum, The Judgment Below Should Be Vacated and Remanded for Reconsideration in Light of *Caballes* and *Muehler*.

The petition asks, in the alternative, that "because the Illinois Appellate Court's opinion is fundamentally incompatible with the principles set forth in [*Caballes*], the judgment below should be vacated and remanded for reconsideration in light of *Caballes*." Pet. 16. Tellingly, nowhere does respondent argue that the decision below is compatible with *Caballes*. Instead, respondent contends that Illinois' GVR request is "unsupported." Opp. 28.

Respondent is wrong. The petition demonstrates in detail why the appellate court's resolution of the questions presented cannot be reconciled with the Fourth Amendment principle underlying *Caballes* — *i.e.*, that the Fourth Amendment permits law enforcement officers, at a probable cause-based traffic stop, to conduct additional investigatory activities that do not effect an incremental search or seizure. Pet. 5, 10, 15-16. Because the opinion below was issued before *Caballes*, a GVR would be

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believe that the motorist possessed drugs. See Reply in Supp. of Pet. for Cert., No. 03-774, at 5-6. That argument, which Illinois does not make in this case, might have raised an obstacle to reaching the question presented. In *Childs v. United States*, 537 U.S. 829 (2002), the Seventh Circuit recognized that the case presented duration (and not just scope) issues, see 277 F.3d at 953-954, and the petition predated the Illinois Supreme Court's decisions in *Bunch* and *Gonzalez* and the Wyoming Supreme Court's decision in *Campbell*. In *Williams v. United States*, 535 U.S. 1019 (2002), the Tenth Circuit suggested that the officers had reasonable suspicion to question the motorist about his travel plans, see 271 F.3d 1262, 1267 (10th Cir. 2001), and the petition predated *Bunch*, *Gonzalez* and *Campbell*.

appropriate, just as it was in *Illinois v. Harris*, 125 S. Ct. 1292 (2005) (vacating decision that Fourth Amendment requires reasonable suspicion to conduct a warrant check of a passenger during a traffic stop, and remanding to Illinois court for reconsideration in light of *Caballes*).

A GVR is even more appropriate given *Muehler v. Mena*, 125 S. Ct. 1465 (2005), which was decided after the petition here was filed. Relying upon *Caballes*, *Muehler* held that a police office did not need reasonable suspicion to question an individual lawfully seized under *Michigan v. Summers*, 452 U.S. 692 (1981), about her immigration status. *Muehler*, 125 S. Ct. at 1471-1472. By the same token, and contrary to the judgment below, an officer does not need reasonable suspicion to question an individual lawfully seized at a traffic stop about contraband in her car.

CONCLUSION

The petition for a writ of certiorari should be granted. At a minimum, the judgment below should be vacated and remanded for reconsideration in light of *Caballes* and *Muehler*.

Respectfully submitted.

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JULY 2005